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# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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**Committee against Torture**

## Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 693/2015*, **

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| *Communication submitted by:* | S.A.M. (represented by counsel, Niels-Erik Hansen) |
| *Alleged victim:* | The complainant |
| *State party:* | Denmark |
| *Date of complaint:* | 28 July 2015 (initial submission) |
| *Date of present decision:* | 3 August 2018 |
| *Subject matter:* | Deportation to Afghanistan |
| *Procedural issue:* | Level of substantiation of claims |
| *Substantive issue:* | Risk of torture upon return to country of origin (non-refoulement) |
| *Articles of the Convention:* | 3 and 16 |

1.1 The complainant is S.A.M, a national of Afghanistan born in 1992.[1] He is an ethnic Hazara from Gardez in Afghanistan. He claims that his removal to Afghanistan would constitute a violation by Denmark of articles 3 and 16 of the Convention.[2] The complainant is represented by counsel.

1.2 On 30 July and 30 September 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure and determined that no

* Adopted by the Committee at its sixty-fourth session (23 July–10 August 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Ana Racu, Diego Rodriguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang. Pursuant to rule 109 of the Committee's rules of procedure, Jens Modvig did not participate in the consideration of the communication.

[1] On 23 June 2011, the Department of Forensic Medicine carried out a comprehensive clinical examination, a dental examination and an X-ray of the complainant's left hand, and determined that he was most likely between 19 and 23 years old. There was a small possibility that he might be as young as 17 years old. On 10 October 2011, the Danish Immigration Service made a decision on the complainant's age and registered him as having been born in June 1992. The complainant disagrees and claims that he was a minor at the time. His dates of birth indicated in the various submissions were as follows: in his initial explanation to the police — 7 June 1995; in his asylum application — 25 February 1996; in an interview with the Danish Immigration Service — 27 December 1995; and according to the certificate of nationality presented to the Swedish authorities — 25 February 1991.

[2] According to the information from the State party of 1 February 2016, the complainant was deported to Afghanistan on 15 December 2015.

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observations from the State party were needed to ascertain the admissibility of the communication.

**Factual background**

2.1 The complainant, an Afghan national, is an ethnic Hazara from Gardez in Paktia Province, Afghanistan. Starting in 1990, his father began working in the Islamic Republic of Iran as a lorry driver for the Islamic Revolutionary Guard Corps, a branch of the Iranian military. In 1995, a conflict arose between the complainant's father and S., his father's half cousin and a high-ranking Taliban officer in Gardez, because the complainant's father would not arrange the hiring of S.'s brother, J.A., by the Iranian military. In 1996, J.A. entered the Islamic Republic of Iran, where he was arrested, charged with espionage and later executed. S. accused the complainant's father of having masterminded the arrest and for years made threatening telephone calls to the complainant's father. S. also contacted the complainant and his family at their home in Afghanistan and threatened their lives. In 1996, due to the continued threats, the complainant and the rest of his family moved to the Islamic Republic of Iran.

2.2 In 2007, the complainant's mother died.[3] In early 2008, having learned that the security situation in Afghanistan had improved and that S. had been arrested by the American forces, the complainant's father returned to Afghanistan with his two sons. About one month later, they were assaulted by armed men in their home and taken to the basement, where they were subjected to torture. S. and his associates arrived later in the day, demanding that the complainant's father admit his involvement in the execution of S.'s brother. S. subjected them to physical abuse, broke the right leg of the complainant and burned his left forearm by pouring hot water on it. The complainant's father was taken away and has never been seen since.[4] The complainant and his brother managed to escape with the help of an old man. The old man provided them with a car and a driver who drove them to their aunt's home in Kabul. The following day, the aunt's husband helped them to get passports and they took a plane to Herat and from there travelled to the Islamic Republic of Iran.

2.3 The complainant stayed in the Islamic Republic of Iran for about two years before travelling to Copenhagen (through Greece, Italy, France and Germany), where he applied for asylum on 17 June 2011.

2.4 On 16 November 2011, the Danish Immigration Service rejected the complainant's asylum application. On 25 July 2012, the Refugee Appeals Board upheld that decision. The Board made a general observation that, although the complainant had given consistent and detailed statements, certain specific elements of his statements were not convincing and seemed non-credible, unlikely and somewhat inconsistent, particularly his statements about his conflict with S., the allegedly inflicted abuses and the circumstances of his escape. Based on an overall assessment, the Board found that the complainant's explanations were constructed for the occasion of his asylum proceedings. The Board also noted that the complainant had not been a member of any political or religious associations or organizations, nor had he been otherwise politically active. It concluded that the complainant would not be at risk of persecution if returned to Afghanistan.

2.5 Subsequently, the complainant underwent a medical examination arranged with the assistance of the Danish Refugee Council. Afraid that he would be deported imminently, the complainant did not wait for the results of the medical examination and left for Greece, where he stayed and worked for about nine months. In Greece he heard that S. had left Afghanistan and gone to India, and he notified the Greek authorities of his intention to return voluntarily to Afghanistan. He also submits that he needed to return to Afghanistan in order to marry his girlfriend. In August 2014, accompanied by the Greek police, the complainant and several other Afghan nationals flew to Kabul. Upon arrival, the complainant went to his home town and was issued with a certificate of nationality there.[5]

[3] There is no information on the circumstances of her death.

[4] The complainant presumes that his father was killed.

[5] According to that document, the complainant was born on 25 February 1991.

2.6 The complainant claims that there was a terrible incident with a bomb blast near a petrol station in Gardez, as a result of which two persons were killed and the complainant suffered a burn to his arm.[6] The complainant believes that this incident was targeted at him and masterminded by S.'s associates. In January 2015, the complainant fled to the Islamic Republic of Iran and from there to Europe. In April–May 2015, he arrived in Sweden where he filed an application for asylum. On 17 June 2015, the complainant was transferred from Sweden to Denmark under the so-called Dublin Regulation.[7]

2.7 On 15 July 2015, the complainant's counsel requested the Danish Refugee Appeals Board to reopen the case on the grounds of the failure of the authorities to undertake a medical examination of the complainant's burn scar on his hand. On 29 July 2015, the Board refused to reopen the asylum proceedings due to a lack of substantial new information or views in the case beyond the information available at the initial hearing by the Board. It also observed that it would not request an examination for signs of torture, since it could not accept the complainant's account as fact.

2.8 On 17 August 2015, the Board decided to reopen the case with a view to reconsidering the credibility of the complainant's statement in the light of the results of the medical examination. In that context, the Board referred to the report of 2 August 2013 from the Amnesty International Danish Medical Group on an examination of the complainant for signs of torture.[8] According to that medical report, the physical findings on the complainant corresponded to the complainant's statement of past ill-treatment.

2.9 On 17 September 2015, the Board upheld the decision of the Danish Immigration Service not to grant refugee status to the complainant. The majority of the Board found that the complainant had made numerous inconsistent and not credible statements with regard to his escape from S.'s associates in 2008, the reasons for his return to Afghanistan and his marriage in 2014. The Board also noted that the contents of the certificate of nationality presented by the complainant in the initial asylum proceedings — including the complainant's date of birth and the spelling of his own and his father's and paternal grandfather's names — did not correspond to the contents of the document presented by the complainant after his re-entry into Denmark, and therefore concluded that at least one of those documents had been obtained illegally for the occasion. The majority of the Board found that that circumstance had contributed to weakening the complainant's credibility. It also noted that, even if all the documents were genuine, and even if the complainant had been to Afghanistan after his departure from Denmark, he had failed to present evidence that rendered it probable that he had been persecuted there. The Board concluded that there was therefore no basis for adjourning the case and instituting an examination for signs of torture.

2.10 On 8 and 22 October 2015, the District Court of Hillerød extended the detention period of the complainant prior to his removal.[9] The complainant appealed against that order to the High Court of Eastern Denmark, submitting that his continued deprivation of liberty as a torture victim would be disproportionate and, therefore, he should be released. On 4 November 2015, the High Court upheld the earlier decision. On 12 November 2015, the complainant sought authorization from the Appeals Permission Board to appeal to the Supreme Court, but that request was rejected on 4 February 2016. On 15 December 2015, the complainant was returned to Afghanistan.

2.11 The complainant indicates that he has exhausted all available domestic remedies.

[6] He already had the scars on his arm allegedly caused by the assault he suffered in 2008.

[7] Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

[8] The examination was arranged by the Danish Refugee Council following the Board's decision to reject the complainant's asylum application in July 2012.

[9] The removal could not take place on 20 October as planned because the complainant physically obstructed attempts to get him to board the plane.

**The complaint**

3.1 The complainant claims that the State party did not adequately assess the risk that he would be subjected to torture if returned to Afghanistan. He claims that he would be at personal risk of being persecuted and tortured by the Taliban, in violation of article 3 of the Convention.

3.2 The complainant submits that, despite the medical evidence provided and his request for further specialized medical examination, the Board denied his asylum request, without ordering such examination. Accordingly, the State party's failure to consider the medical information provided by the complainant and its refusal to request a further medical examination constitute a violation of article 3 of the Convention.[10]

3.3 The complainant claims that the State party also failed to consider and assess his claims within the context of the situation of human rights in Afghanistan, in particular to take into account the statements of government officials of Afghanistan who urged Western Governments to stop all forced repatriation to Afghanistan due to the lack of security and the lack of capacity of the Afghan authorities to protect the human rights of their own citizens.

3.4 The complainant also claims that the State party has violated article 16 of the Convention, as he was deprived of liberty for almost six months prior to his return to Afghanistan.

**State party's observations on admissibility and the merits**

4.1 On 1 February 2016, the State party submitted its observations on admissibility and the merits. It maintains that the complaint should be considered inadmissible. Should the Committee find the complaint admissible, the State party submits that it did not violate article 3 of the Convention by returning the complainant to Afghanistan.

4.2 The State party provides a detailed description of the structure, composition, independence, prerogatives and functioning of the Refugee Appeals Board. The Board is an independent, quasi-judicial body, and is considered a court within the meaning of article 39 of Council of the European Union Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member States for granting and withdrawing refugee status. Under the Aliens Act, the Board members are independent and cannot seek directions from the appointing or nominating authorities. The Board's decisions are final. Aliens may, however, lodge an appeal before the ordinary courts, which can adjudicate on any matter concerning the limits of a public authority's competence. As established by the Supreme Court, the ordinary courts' review of decisions by the Board is limited to points of law; the Board's assessment of evidence is not subject to review.

4.3 The State party notes that, when exercising its powers under the Aliens Act, the Board is legally obliged to take the international obligations of Denmark into account. To ensure that its decisions are in accordance with these obligations, the Board and the Danish Immigration Service have jointly drafted a number of memoranda describing in detail the legal protection of asylum seekers afforded by international law, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the International Covenant on Civil and Political Rights. These memoranda form part of the basis for the decisions made by the Board.

4.4 The State party indicates that when torture is invoked as grounds for asylum, the Board takes into account factors such as the nature of the torture, including the extent, grossness and frequency of the abuse, the asylum seeker's age, and the time that has elapsed between the alleged torture and the asylum seeker's departure from his or her country of origin. A crucial point for a review of an asylum claim is the situation in the

[10] See *K.H. v. Denmark* (CAT/C/49/D/464/2011).

country of origin at the time of return.[11] The Board also takes into account information on whether systematic, gross, flagrant or mass human rights violations take place in the country of origin.

4.5 The fact that an asylum seeker has been subjected to torture or ill-treatment in his country of origin may be an essential point in the assessment made by the Board of whether the conditions required under the Aliens Act are met. However, according to the Board's case law, the conditions for granting asylum are not satisfied in all cases where an asylum seeker has been subjected to torture in his country of origin.[12] The State party observes that, even if it were assumed that the complainant had been detained and tortured in his country of origin in the past, it does not automatically follow that he would still be at risk of being subjected to torture if returned to his country of origin.[13]

4.6 Regarding the complainant's allegation related to the Danish authorities' refusal to conduct a medical examination for signs of torture, the State party indicates that when torture is invoked as grounds for asylum, the Board may order such an examination, but that this decision is only taken during the Board's hearing, as the assessment of the need for a medical examination depends on the asylum seeker's statements, in particular his or her credibility. The Board generally does not order an examination for signs of torture when the asylum seeker has lacked credibility during the asylum proceedings. Even if the Board considers it proved that the asylum seeker has previously been subjected to torture, if it finds that there is no real risk of torture upon return at present, it does not order a medical examination.[14] The State party also refers to the judgment of the European Court of Human Rights in *Cruz Varas v. Sweden*,[15] in which the Court found that despite the medical evidence provided by the applicant, substantial grounds had not been shown for believing that the applicant's expulsion would expose him to a real risk of being subjected to inhuman or degrading treatment upon return to his country of origin, due to the inconsistencies in his statement during his asylum proceedings. The State party therefore considers that, as decided by the Board, there was no need to conduct a medical examination in the present case, taking into account the lack of credibility of the complainant.

4.7 As regards the examination of the complainant by the Amnesty International Danish Medical Group for signs of torture, the State party indicates that it was taken into account by the Board in its determination of the appeal on 17 September 2015. It also observes that the results of the medical examination cannot lead to a different assessment of the credibility of the complainant's statement on his grounds for asylum.

4.8 The State party notes the complainant's assertion, that after having left Denmark in 2013 he stayed in Greece and subsequently re-entered Afghanistan and took up residence in the area where S. used to live, does not substantiate the complainant's claim of his fear of S. It also does not match with his earlier statement to the effect that S. was a very powerful

[11] The State party refers to *X, Y and Z v. Sweden* (CAT/C/20/D/61/1996), in which the Committee noted that past torture is one of the elements to be taken into account by the Committee when examining a claim concerning article 3 of the Convention, but that the aim of the Committee's examination of the communication was to find whether the authors would risk being subjected to torture now, if returned to the Democratic Republic of the Congo. It also refers to *M.C.M.V.F. v. Sweden* (CAT/C/35/D/237/2003), in which the Committee took into account the change of situation in the country of origin of the complainant, El Salvador, where the armed conflict had ceased 10 years before the complaint was brought to the Committee.

[12] The State party refers to *N.Z.S. v. Sweden* (CAT/C/37/D/277/2005), in which the Committee considered that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk.

[13] Ibid.

[14] In this connection, the State party refers to *M.O. v. Denmark* (CAT/C/31/D/209/2002), in which the Committee considered that there had not been a violation of the Convention due to the complainant's lack of credibility, despite his statement that he had been subjected to torture and medical evidence in support of that claim. See also *Nicmeddin Alp v. Denmark* (CAT/C/52/D/466/2011).

[15] Application No. 15576/89, judgment of 20 March 1991, paras. 77–82.

Taliban commander who had many informants in the city and could bribe anybody to achieve his intentions.

4.9 The State party indicates that, in its decision of 17 September 2015, the Refugee Appeals Board found that the complainant's statement that he had returned to Afghanistan to marry lacked credibility. The complainant had not provided the information that he had a girlfriend in Afghanistan at any time during the examination of his application by the Danish Immigration Service, or at the hearing of the Board in 2012, and subsequently made inconsistent statements as to whether he had had contact with his girlfriend. Furthermore, the complainant provided divergent statements as to whether he had married at all and where the marriage was contracted. In that respect, the complainant stated to the police on 26 June 2015 that he had married an Afghan woman in late 2014, but that due to the problems that he had faced following his return to Afghanistan, he had never had the time to have a marriage certificate issued. However, at the Board hearing on 17 September 2015, the complainant stated that his girlfriend was not really his spouse, as they had been married at an unofficial ceremony in the Islamic Republic of Iran.

4.10 The State party observes that the information on the complainant's date of birth and the spelling of his, his father's and his paternal grandfather's names on the certificate of nationality presented in the initial asylum proceedings do not correspond with the contents of the documents presented by the complainant after re-entering Denmark in 2015. On that basis, the Refugee Appeals Board deemed that at least one of the documents had been obtained for the occasion. The State party agrees with the assessment of the Board that this conflicting information reduced the complainant's credibility even further. The State party adds that, when applying for asylum in Sweden, the complainant did not present to the Swedish authorities the certificate of nationality allegedly obtained when he allegedly returned to Afghanistan, as evidenced by the Swedish authorities' request of 8 May 2015 to have the complainant returned from Sweden to Denmark under the Dublin Regulation. This directly contradicts the complainant's statement to the Board on 17 September 2015, in which he claimed that he had presented his certificate of nationality in Sweden.

4.11 The State party submits that the fact that the complainant is a young ethnic Hazara from Paktia Province cannot in itself justify his eligibility for international protection. During the asylum proceedings in Denmark, he had not referred to his ethnicity as a circumstance justifying asylum. According to the Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan of the Office of the United Nations High Commissioner for Refugees (UNHCR), the Taliban attack civilians in local communities in which the local population does not support them, primarily targeting tribal elders, religious leaders and women in the public sphere, and those holding public office. The State party observes that the complainant appears to be a low-profile individual, who has never experienced any problems with the Afghan authorities. It is also quite improbable that the Taliban would attempt to forcibly recruit people in Hazara communities, because the Taliban and the Hazara do not trust each other.[16] Accordingly, the State party affirms that the complainant will not risk abuse contrary to article 3 of the Convention, due to his age and ethnicity, in Afghanistan.

4.12 Regarding the complainant's reference to *K.H. v. Denmark*, the State party indicates that that case is different from the present one. In *K.H.*, the Board considered plausible the complainant's allegations that he would be subjected to torture by the Taliban if returned to Afghanistan.

4.13 The State party also refers to *Z. v. Denmark* (CAT/C/55/D/555/2013, para. 7.5), in which the Committee considered that, although the State party rejected the complainant's request to conduct a medical examination, the complainant had failed to substantiate basic elements of his claims, and therefore the Committee found that it had not been demonstrated that the authorities had failed to conduct a proper assessment of the risk of torture.

[16] See Denmark, Danish Immigration Service, *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process*, report of the Danish Immigration Service's fact-finding mission to Kabul, Afghanistan, 25 February–4 March 2012 (Copenhagen, 2012).

4.14 Concerning the complainant's reference to the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, and the indication from the Government of Afghanistan in March 2015 that it wants to renegotiate its repatriation agreement with the Danish authorities, the State party observes that those references cannot lead to a revised legal assessment of the complainant's eligibility for asylum. The State party believes that the general situation in Afghanistan, including in Kabul, is not in itself of such a nature that, for that reason alone, the complainant could be recognized as a refugee.

4.15 The State party reiterates that, by returning the complainant to Afghanistan on 15 December 2015, it did not violate article 3 of the Convention.

**Complainant's comments on the State party's observations**

5.1 On 18 August 2016, the complainant commented on the State party's observations and maintained that Denmark has violated article 3 of the Convention, in particular because his request to have a medical examination had been rejected by the State party's authorities.

5.2 The complainant asserted that in addition to violating article 3 of the Convention, the State party had also violated article 16, by keeping the complainant in detention for almost six months prior to his return to Afghanistan on 15 December 2015.

5.3 The complainant recalls having appealed his detention to the High Court of Eastern Denmark. On 4 November 2015, the High Court upheld the earlier decision. On 12 November 2015, the complainant applied to the Appeals Permission Board for permission to appeal to the Supreme Court, without success.

5.4 The complainant also submits that, when reviewing his appeal for release, neither the police nor the courts have considered as facts the findings reflected in the Amnesty International medical examination.

5.5 The complainant further submits that after living abroad he risks being perceived as a person who is opposed to the rules of Islam. Additionally, owing to his age, he risks being forced to fight for the Government of Afghanistan or the Taliban,[17] or being subjected to sexual assault. The complainant also claims that he has no protection, since he has no family left in Afghanistan and he belongs to the Hazara minority group.

5.6 The complainant claims to have exhausted all domestic remedies and considers that his communication should be declared admissible and reviewed together with the original claim.

**State party's additional observations**

6.1 On 31 March 2017, the State party reiterated that the Refugee Appeals Board had carefully considered all the elements of the case, including the findings of the Amnesty International Danish Medical Group, but had decided not to request a second opinion from the Department of Forensic Medicine for signs of torture as such an examination could not be expected to contribute any further relevant facts to the case. With reference to its previous observations, the State party notes that, based on an overall assessment of the information on file, including the results of the medical examination, the complainant has not been able to demonstrate that his claims are probable, including that he was detained and subjected to torture and other physical abuse by S. and his associates in 2008. The State party also indicates that, although it appears from the medical examination that there is consistency between the alleged torture, his physical and mental symptoms and the objective findings of the examination, this is not tantamount to accepting as a fact that the complainant was detained in 2008 and subjected to torture and other physical abuse by S. and his group.

6.2 The State party notes that the complainant has failed to establish a prima facie case for the purpose of admissibility of his complaint under article 16 of the Convention, and that this part of the complaint should therefore be considered inadmissible as manifestly

[17] See *F.K. v. Denmark* (CAT/C/56/D/580/2014).

unfounded, in accordance with rule 113, subparagraph (b), of the Committee's rules of procedure. The State party contends that the complaint did not sufficiently substantiate the claim that there were substantial grounds for believing that Denmark had violated its obligations under article 16 of the Convention by detaining the complainant. The complainant has not stated in what way the authorities violated the State party's obligation to prevent other forms of ill-treatment that do not amount to torture. All decisions on the deprivation of liberty were made by the courts under the applicable provisions of the Aliens Act.

6.3 The State party also indicates that the case law of the Board includes similar cases where the conclusions of a medical examination support complainants' claims that they sustained physical or mental injury as a result of torture inflicted as a consequence of a conflict with the authorities. In such cases, however, the Board may ascertain that the asylum seeker suffers from physical or mental injury, but that the reason why the injury was inflicted and who caused the injury cannot be established. Moreover, an examination does not necessarily clarify whether the complainant's injury was caused by torture or whether the injury sustained was sustained in an incident such as a fight, an assault, an accident or an act of war; and an examination cannot at all clarify whether or not the statement given by the asylum seeker as to why he or she was subjected to abuse, and by whom, is true.

6.4 Regarding the complainant's claim on his prolonged detention, the State party notes that, following his disappearance and failure to appear when summoned, an alert was recorded in the Danish Criminal Register on 30 September 2013 for the purpose of his detention and return to Afghanistan. In order to ensure the complainant's presence for his return to Afghanistan, as allowed by section 36 (1) of the Aliens Act, he was deprived of his liberty upon his transfer from Sweden to Denmark on 17 June 2015 under the Dublin Regulation. On 19 June 2015, the District Court of Hillerød acknowledged the lawfulness of his detention and decided to extend it. The Court ordered the extension of the complainant's detention period several times due to certain developments in the case, including the Board's decision to suspend the case until further notice and a failed attempt to return him when he physically obstructed attempts to get him to board a plane on 20 October 2015. The complainant was detained for a total period of 5 months and 28 days, which was mainly attributed to the complainant's own circumstances, including his lack of cooperation.

6.5 The State party observes that the application of the provisions of the Aliens Act concerning detention for the purpose of return depends on an individual assessment and on whether there is a basis for depriving an alien of his or her liberty or whether lighter measures are sufficient to ensure his or her presence. Such an assessment may cover different matters pertaining to the personal circumstances of the alien and the circumstances of the case in general, including whether the alien has observed any duty to report so far, whether the alien has previously disappeared, whether the alien has collaborated in the determination of his or her nationality and identity or otherwise contributed information to the case proceedings and whether there are other circumstances requiring the detention.

6.6 Concerning the complainant's allegation that the State party violated article 16 of the Convention and his submission that the police and the courts should have accepted as facts the contents of the Amnesty International medical report when ruling on his deprivation of liberty, the State party indicates that the police had made an ongoing assessment of whether the complainant's detention could be continued, while paying attention to the condition of his health. The police were in constant dialogue with the complainant about his health, including each time he was taken to the court at the expiry of a period of detention. Prior to the return procedure on 20 October and 15 December 2015, the complainant indicated to the police that he was healthy and that he was not taking any medication.

6.7 The State party also notes that the High Court of Eastern Denmark took the report of the Amnesty International examination for signs of torture into account when it considered the complainant's detention claim. In this connection, the legal rules do not prescribe the weight to be given to evidence by a court and, accordingly, it is up to the court to decide which evidence to credit and how much weight to give it. No information was provided to

the court to indicate that the complainant could not remain in detention, nor was his health condition seen as a bar to his return to Afghanistan.

**Issues and proceedings before the Committee**

*Consideration of admissibility*

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 The Committee notes the complainant's claim that the State party violated article 16 of the Convention by detaining him for 5 months and 28 days prior to his return to Afghanistan. It observes that the High Court of Eastern Denmark took into account the results of the medical examination made by Amnesty International when rejecting the complainant's appeal. Furthermore, the State party submitted that no information had been provided to indicate that the complainant could not remain in detention, nor was his health condition seen as a bar to his return to Afghanistan. In these circumstances, and in the absence of any further information or explanation on file, the Committee considers that the deprivation of liberty in itself is insufficient to substantiate the author's claim of a violation of article 16 of the Convention. Accordingly, the Committee finds that this part of the communication is not sufficiently substantiated for the purpose of admissibility.

7.4 The Committee also notes that the State party maintains that the complaint should be declared inadmissible pursuant to rule 113, subparagraph (b), of the Committee's rules of procedure, as it is manifestly unfounded. The Committee, however, observes that the complainant has sufficiently detailed the facts and the basis of his claims of a violation of article 3 of the Convention. As the Committee finds no further obstacles to admissibility, it declares the claims under article 3 of the Convention admissible and proceeds with its consideration of the merits.

*Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

8.2 In the present case, the issue before the Committee is whether the forced removal of the complainant to Afghanistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Afghanistan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a

consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk. Although, under the terms of its general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).

8.5 In assessing the risk of torture in the present case, the Committee notes the complainant's contention that there is a foreseeable, real and personal risk that he will be persecuted and tortured if returned to Afghanistan, by members of the Taliban or by the authorities, owing to the conflict between his father and a high-ranking Taliban officer and the fact that the complainant has already been harassed, threatened and attacked for those reasons in the past. In this regard, the Committee notes the complainant's allegations that, upon his return to Afghanistan in 2008, he, his father and his brother were all assaulted by armed Taliban members in their home and were taken to the basement of the building where they were ill-treated and tortured. As a result of the physical abuse, his right leg was broken and his left arm was burned by hot water. The complainant's father was taken away and has not been seen since. The complainant and his brother then managed to escape to the Islamic Republic of Iran.

8.6 The Committee notes that the Danish Refugee Appeals Board rejected the complainant's asylum claim on 25 July 2012, concluding that his statements were not convincing and seemed to be non-credible, unlikely and somewhat inconsistent, particularly regarding his statements about his conflict with the high-ranking Taliban officer, S., the allegedly inflicted abuses and the exact circumstances of the escape.

8.7 The Committee notes that, although the Board refused to carry out a specialized medical examination to verify whether the complainant's injuries had been sustained as a result of torture, the Board did reopen the case on 17 September 2015 with a view to reconsidering the credibility of the complainant's statement in the light of the new results from a medical examination conducted by the Amnesty International Danish Medical Group. The Committee underlines the importance of medical examinations carried out by independent institutions, including the Amnesty International Danish Medical Group. It also notes the State party's observation that this medical examination "does not necessarily clarify whether the complainant's injury was caused by torture or whether the injury was sustained in an incident such as a fight, an assault, an accident or an act of war". The Committee also notes that, following a thorough evaluation of all the evidence presented by the complainant, including the medical report of the Amnesty International Danish Medical Group, the competent authorities found the complainant to lack credibility and did not consider it necessary to order a further medical examination.[18] The Committee refers to its jurisprudence in which it concluded that the responsible organs of the State party had thoroughly evaluated all the evidence presented by the complainant and found it to lack credibility.[19] In the light of these considerations, the Committee finds that the complainant has not demonstrated that the authorities of the State party that considered the case have failed to conduct a proper assessment of the risk of torture for the complainant in Afghanistan.

8.8 The Committee refers to the fact that the complainant returned to Afghanistan voluntarily in 2014, and is of the opinion that this factor further weakens the complainant's argument for his asylum claim. The Committee also notes that the Board found the complainant's claims about this return to Afghanistan not to be credible, as he had made numerous inconsistent statements. The Committee also notes that, when considering the

[18] See *Nicmeddin Alp v. Denmark*.

[19] See *Z. v. Denmark*, para. 7.5.

case, the Board also took into account the numerous diverging and contradictory statements that the complainant made during his asylum proceedings, including in Sweden, from where he was subsequently transferred to Denmark under the Dublin Regulation.

8.9 In the light of the above considerations, and on the basis of all the information submitted by both parties, including on the general situation of human rights in Afghanistan, the Committee considers that the complainant has not adequately demonstrated the existence of substantial grounds for believing that his return to Afghanistan, at present, would expose him to a real, foreseeable and personal risk of torture, as required under article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Afghanistan by the State party would not constitute a violation of article 3 of the Convention.

United Nations CAT/C/64/D/694/2015

# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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**Committee against Torture**

## Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 694/2015*, **

| | |
|---|---|
| *Communication submitted by:* | M.S. (represented by counsel, Rajwinder S. Bhambi) |
| *Alleged victim:* | The complainant |
| *State party:* | Canada |
| *Date of complaint:* | 7 August 2015 (initial submission) |
| *Substantive issue:* | Risk of torture upon deportation to India |

At its meeting on 3 August 2018, the Committee, not having received comments from the complainant's counsel on the State party's observations on admissibility and the merits, despite sending several reminders to that effect, and taking into account that the request for interim measures has been lifted and the communication with the counsel and the complainant has been lost, decided to discontinue the consideration of communication No. 694/2015.

* Adopted by the Committee at its sixty-fourth session (23 July–10 August 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

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